

Application Serial No. 09/666,356  
Amendment dated April 1, 2004  
Reply to Office Action of October 2, 2003

Remarks

The Specification and Claims 1, 8, 9, 13 and 17 have been amended. Re-examination and reconsideration of the application, in view of the amendments above and the remarks below, are respectfully requested.

The Examiner objected to the Specification as failing to provide proper antecedent basis for certain claimed subject matter. Applicant has so amended the Specification, and in doing so has not entered any new matter.

The Examiner rejected claims 1-4, 8-11, 13, 17 and 18 under 35 U.S.C. §102(b) as being anticipated by British 2,238,062. Of these claims, claims 1, 8 and 17 are independent claims. All of the independent claims have been amended to clarify the invention, and in doing so now more than ever, define over British '062.

More particularly, claim 1, as amended, calls for a method of memorializing a deceased comprising providing a lawn or garden sculpture comprising a pedestal including a base having a first cross-section and a shaft extending upwardly from the base and having a second cross-section, smaller than the first cross-section, and an ornament mounted atop the shaft of the pedestal, the lawn or garden sculpture being adapted to contain cremated remains of the deceased, placing the cremated remains of the deceased in the lawn or garden sculpture and displaying the lawn or garden sculpture on a lawn or in a garden of a loved one of the deceased.

Whereas claim 1 is a method claim, claims 8 and 17 are apparatus claims. To that end, claim 8, as amended, calls for a combination lawn or garden sculpture and cremation remains container comprising a pedestal including a base having a first cross-section and a shaft extending upwardly from the base and having a second cross-section, smaller than the first cross-section, the shaft having an open first end, a second end and at least one wall interconnecting the first and second ends, a receptacle, adapted to receive therein cremation remains, removably received in the shaft of the pedestal and having an open first end, closed second end and at least one wall interconnecting the first and second ends and an ornament mounted to an uppermost one of the first and second ends of the shaft of the pedestal.

Claim 17 calls for a combination lawn or garden sculpture and cremation remains container comprising a pedestal including a base having a first cross-section and a shaft extending upwardly from the base and having a second cross-section, smaller than the first cross-section, the shaft having an open upper end, a lower end and at least one wall interconnecting the upper and lower ends, a receptacle, adapted to receive therein cremation remains, removably received in the shaft of the pedestal and having an open upper end, a closed lower end, at least one wall interconnecting the upper and lower ends and a removable cover on the upper end, an ornament mounted to the upper end of the shaft of the pedestal and an annular gasket interposed and compressed between the ornament and the shaft of the pedestal.

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British '062 neither teaches nor suggests Applicant's pedestal including a base having a first cross-section and a shaft extending upwardly from the base and having a second cross-section, smaller than the first cross-section, as claimed in independent claims 1, 8 and 17. Accordingly, it is submitted that the §102(b) rejection of claims 1-4, 8-11, 13, 17 and 18 on the basis thereof is in error and should be withdrawn.

The balance of the rejections of the claims are in the nature of 35 U.S.C. §103(a) rejections. Claims 6, 15 and 20 were rejected on the basis of British '062 in view of Virginia Metalcrafters "In The Garden" (1997), and claims 12 and 19 were rejected over British '062 in view of Japanese 408010294. With respect to claims 6, 15 and 20, it is submitted that absent hindsight and use of Applicant's own teachings by the Examiner, there is no teaching, suggestion or motivation to combine Virginia Metalcrafters with British '062, and for that reason the §103(a) rejection of claims 6, 15 and 20 is in error and should be withdrawn.

With respect to claims 12 and 19, the deficiencies of British '062 have been discussed above. Japanese '294 supplies none of the deficiencies thereof. Moreover, again absent hindsight, there is absolutely no incentive to combine these two references. Accordingly, it is submitted that claims 12 and 19 are allowable as well.

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In view of the above, it is submitted that all of the claims 1-20 re entirely  
in a condition for allowance. Re-examination of the application is respectfully  
requested, and an early Notice of Allowance is earnestly solicited.

Respectfully submitted,

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